IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15 .06.2006

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

WRIT PETITION No.26840 of 2003
and WPMP.No.32782 of 2003

1. Jayaseelan
2. Ratnaseelan ... Petitioners

Vs.

1. The Government of Tamil Nadu
rep.by its Secretary,
Revenue Department,
Fort St.George,
Chennai - 600 009

2. The Principal Commissioner &
Commissioner of Land Reforms,
Chepauk, Chennai - 600 005.

3. The Assistant Commissioner /
Competent Authority, Urban Land Ceiling,
5, Sannadhi Street,
Poonamallee, Chennai - 600 056. .. Respondents

* * *

The Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus as stated therein.

* * *

For petitioners : M/s.V.Ramesh
For respondents : Mr.M.Mahalingam - G.A.

O R D E R

The Writ Petition has been filed praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondents, especially the order of the third respondent, dated 15.12.1995, vide Ref.NA.Ka.No.845/95/C, in respect of lands of the petitioners measuring 3950 Sq.mts. in survey No.70 of Ayapakkam Village, and quash the same, and direct the respondents to treat the proceedings as abated under Section 4 of Act 20 of 1999, viz., The Tamil Nadu Urban Land (Ceiling & Regulation) Repeal Act.

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2. Heard the learned counsel for the petitioners as well as the respondents.

3. It is the case of the petitioners that they are brothers who are the owners of the land in Survey No.70 of Ayapakkam Village measuring about 3950 Sq.mts. The said land had been purchased by the petitioners by a registered sale deed, dated 18.02.1988. From the chitta and adangal extracts, it is clear that the petitioners are the owners of the petition property.

4. It is the further case of the petitioners that acquisition proceedings under Tamil Nadu Urban Land (Ceiling and Regulation), Act, 1978, (hereinafter referred to as 'the Act') were initiated with regard to the petition land in the name of one Mr.Raghavan, who is not the owner of the said property. The petitioners came to know about the said proceedings when they wanted to remit the kist for the fasali 1410. Further, when the petitioners had applied for certified copies of the acquisition proceedings, the third respondent had issued a copy of the order, dated 15.12.1995, made under Section 9(5) of the Act. The petitioners had filed an appeal before the second respondent under Section 33 of the Act. However, the appeal was returned by the second respondent by an endorsement, dated 31.07.2001, vide R.C.No.8730/2001-J1. Since the second respondent had failed to entertain the appeal preferred by the petitioners, the present writ petition has been filed.

5. It is further submitted that the lands in question are purely agricultural lands as seen from the chitta and adangal extracts and therefore, not liable to be quashed under the Act. Even though the respondents were aware of the fact that the petitioners are the owners of the land, the land acquisition proceedings were taken against one Mr.Raghavan. This is clear from the fact that a notice under Section 7(2) of the Act was issued by the third respondent to the petitioners for which they had replied stating that the lands were agricultural lands and therefore, it cannot be acquired under the Act. Further, the third respondent by an endorsement, dated 26.07.1994, vide Ref.Rc.C/218/93, dropped all further proceedings against the said lands on the ground that they were agricultural lands. Therefore, the order of the third respondent, dated 15.12.1995, in the name of Mr.Raghvan, inspite of the fact that the petitioners were the actual owners of the property cannot be sustained in law. Further, the land was assessed for urban land tax in the name of one Mr.Arasan Naicker, and the demand of urban land tax was raised against the petitioners. The petitioners had moved the second respondent by a petition, dated 03.02.1993, and by an endorsement, dated 12.03.1993, vide Ref.K1/4415/93, the second respondent had directed the petitioners to file a revision under Section 30 of the Tamil Nadu Urban Land Tax Act with regard to the assessment of tax.

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6. It is contended by the petitioners that the acquisition proceedings, dated 15.12.1995, refers to a notice under Section 7(2) of the Act, dated 3.1.1994, which has been closed by the third respondent, on 26.07.1994 itself. This clearly shows the lack of application of mind on the part of the third respondent in passing the impugned order, dated 15.12.1995. It is further contended by the petitioners that the notice under Section 7(2) vide Ref.953/94, dated 03.01.1994, is stated to have been served, on 29.09.1995, by affixture, eventhough , the said notice was served on the land owner earlier for which a reply had also been sent. The said fact is evident from the order of the third respondent, dated 26.07.1994. Further, it is clear from the impugned order, dated 15.12.1995, that notices under Section 9(4) and the draft statement under Section 9(1) of the Act were not served on the land owner prescribed as per rule 8 of the rules formulated in accordance with law. The Tamil nadu Urban Land Ceiling and Regulation, Act 1978, states that all notices and orders are to be served on the land owners by registered post with acknowledgement due and serving of notice by affixture cannot be done except after following the prescribed procedures provided under the rules. Therefore, no steps have been taken by the respondents to serve the notice on the actual owners of the property in question before passing the various orders, under Sections 9 to 11 of the act. Eventhough, the petitioners are in possession and enjoyment of the lands sought to be acquired by the respondents, no notice under Section 11(5) of the Act has been served on them. Further, the physical possession of the lands is still with the petitioners, since the respondents had not taken actual possession of the lands. Therefore, all proceedings initiated under the provisions of the Tamil nadu Land (Ceiling and Regulation) Act, 1978, shall stand abated. In accordance with Section 4 of the Repeal Act, Act 20 of 1999, it is further contended by the petitioners that no person can be deprived of his right to property except in accordance with the procedure established by law. Any deviation in following the procedure would infringe Article 300A of the Constitution of India. Section 11(5) of the Tamil nadu Urban (Ceiling and Regulation) Act, 1978, contemplates issuance of notice for voluntary surrender of land. If the land owner or the person in possession of the land fails to surrender the land in his possession, power is conferred on the respondents to take possession of the land by use of force, under Section 11 (6) of the Act. The petitioners have not surrendered the land since no notice had been received by them under Section 11(5) of the Act. Further, no proceedings have been initiated by the respondent under Section 11(6) of the Act. Therefore, possession of the petition lands continues to be with the petitioners and all proceedings relating to acquisition of the lands shall abate under Section 4 of Act 20 of 1999. It is further contended by the petitioners that the actual possession is vested with the petitioners and possession taken by the respondents is only on record. Before taking actual possession,

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certain formalities have to be followed, like preparation of the memorandum or panchnama duly attested by the independent witnesses etc. Such procedures have not been followed and actual possession have not been taken by the respondents. In such circumstances, the entire proceedings initiated and proceeded with by the respondents, including the order of the third respondent, dated 15.12.1995, vide Ref.Na.Ka.No.845/95/C, in respect of the lands belonging to the petitioners measuring 3950 sq.mts in survey No.70 of Ayapakkam village shall stand abated in accordance with Section 4 of Act 20 of 1999.

7. On the contrary, it is stated by the respondents that the land in S.No.70/1 measuring 3950 in Sq.mts, in Ayapakkam Village, Ambattur Taluk, Tiruvallur District, was registered in the name of Mr.Raghavan in the revenue records. Mr.Raghavan had not filed the statement under Section 7(1) of the Tamil Nadu Urban Land (Ceiling and Regulation Act), 1978. Hence, a notice under Section 7(2) of the Act was sent to him in SR.No.953/94, dated 03.01.1994. Since his full address was not known, the notice was served on 29.09.1995 by affixture and no objections were received under Section 9(4) and draft statement under Section 9(1) of the said Act was issued in SR.C/845/95, dated 16.10.1995, and served by affixture. The land was inspected by the Deputy Tahsildar, on 11.12.1995, and it was found converted into a house site. Orders under Section 9(5) of the Act was passed in SR.No.845/95/C, dated 15.02.1995, declaring an extent of 3450 Sq.mts of land as excess vacant land, after allowing 500 Sq.mts for his entitlement, in S.No.70 of Ayappakkam village. The said order had been served on 09.02.1996.

8. It is further stated by the respondents that the final statement under Section 10(1) of the said Act was issued in SR.C/845/95, dated 29.03.1996, and the same was served by affixture. The notification under Section 11(1) of the Act was prepared and SR.C./845/95, dated 05.12.1996, was published in the Tamil Nadu government Gazette on 29.01.1997. The notification under Section 11 (3) was also published in the Tamil Nadu government Gazette on 03.09.1997. The notice under Section 11(5) was issued in SR.C./845/95, dated 25.9.1998 and the same was also served by affixture. The excess vacant land measuring 3450 Sq.mts in S.No.70/1 in Ayappakkam village was handed over to the revenue authorities on 05.04.1999. Notice under Section 12(7) was issued on 12.11.2001, and it was served on Mr.Elangovan, son of Mr.Raghavan on 05.12.2001 and orders under Section 12(6) of the Act was issued on 08.04.2002. It is further stated by the respondents that the petitioners herein had filed the appeal before the Principal Commissioner and Commissioner (Land Reforms) , Chepauk, Chennai. The Principal Commissioner and Commissioner (Land Reforms) in his Endt. Rc.8730/2001/J1, dated 31.07.2001, has informed the petitioner to take such action as is provided for in the Repeal Act 20 of 1999.

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9. It is further submitted by the respondents that as per the provisions of the Tamil Nadu Urban Land Ceiling Act, 1978, acquisition proceedings were taken against Mr. Raghavan who is the owner of the land in question as on 03.08.1976, according to the revenue records available with the respondents. Eventhough it is claimed by the petitioners that they had purchased the lands from Mr.Elangovan, son of Mr.Raghavan, vide document Nos.971 and 972, dated 22.02.1988, the land was registered in the name of Mr.Raghavan in the revenue records, as on 03.08.1976. The petitioners had purchased the land in the year 1988 and at the time of inspection by the Deputy Tashildar, on 11.12.1995, the land was found converted into urban land. No objections were received and no documentary evidence was submitted to show that the land was agricultural in nature. Since the name of Mr.Raghavan was entered in the revenue records, as the owner of the lands, with effect from Fasili on 1397, all actions were taken against Mr.Raghavan in accordance with the provisions of Tamil Nadu Urban Land (Ceiling and Regulation) Act 1978, and therefore, all the proceedings taken by the respondents were in accordance with law contrary to the claims made by the petitioner.

10. On a perusal of the documents filed before this court, it is found that the petitioners had purchased the lands in question in S.No.70 of Ayapakkam Village in the year 1988. However, the land acquisition proceedings initiated by the respondents herein had proceeded against one Mr.Raghavan, eventhough he was not the owner of the land at the time of the proceedings. Further, it is also noticed that the lands in question were said to be agricultural lands and therefore, not liable to be acquired under the Urban Land Ceiling and Regulation Act, 1978. This fact was also recognised by the third respondent by his endorsement, dated 26.07.1994, vide Ref.Rc.C/218/93. It is also seen that the land acquisition proceedings were continued against one Mr.Raghavan culminating in the order of the third respondent, dated 15.12.1995, and the lands in question were assessed for the purpose of Urban Land tax in the name of one Mr.Arasan Naicker. Further, the respondents had not followed the procedure established by law for serving of notice before the acquisition of lands could be concluded.

In such circumstances, there was nothing shown from the records by the learned counsel appearing for the respondents to prove that actual possession had been taken by the respondents from the petitioners. Further, following the earlier decisions of this Court it can be reasonably concluded that the proceedings initiated under the Tamil Nadu Urban Land Ceiling Act, 1978, were not proceeded against the petitioners who were shown to be in actual possession of the lands in question, and the repeal Act 20 of 1999, on coming into force, the acquisition proceedings stand abated in accordance with

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Section 4 of Act, Act 20 of 1999. Therefore, the order of the third respondent, dated 15.12.1995, vide Ref.Na.Ka.No.845/95/C, in respect of the lands belonging to the petitioner, measuring 3950 sq.mts in Survey No.70 of Ayapakkam Village, Ambattur Taluk, Tiruvallur District, is set aside. Accordingly, the writ petition is allowed. No costs. Consequently, the connected WPMP is closed.

ssm

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary,
   The Government of Tamil Nadu
   Revenue Department,
   Fort St.George,
   Chennai - 600 009

2. The Principal Commissioner &
   Commissioner of Land Reforms,
   Chepauk, Chennai - 600 005.

3. The Assistant Commissioner /
   Competent Authority, Urban Land Ceiling,
   5, Sannadhi Street,
   Poonamallee, Chennai - 600 056.

+ 1 cc to Mr. V. Ramesh, Advocate SR No.25175

+ 1 cc to Government Pleader SR No.24805

MAB(CO)
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